

# The Role of Financial Dispute Resolution Schemes in Enhancing Consumer Trust and Confidence

Perspective of Canada's  
Ombudsman for Banking Services and Investments (OBSI)

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# Agenda

## For the Panel

- **Does Financial Dispute Resolution (FDR) Build Trust and Confidence?**
- **What FDR Does Well, and Does Not**
- **FDR Accessibility**

## For Your Reference

- **The Value of Developing International Best Practices**
- **Evolution of Financial Dispute Resolution in Canada**



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# 1. The Role and Value of FDR



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# Does FDR Build Trust and Confidence?

- **Yes, but only when part of a broader and effective legal and regulatory framework**
- **Bank solvency and overall financial market stability and employment are bigger issues/concerns for the public**
- **Only an issue when a problem is encountered; then it matters a great deal**
- **FDR is no substitute for good consumer-facing market conduct regulation, in fact it needs the clear benchmark**



# Does FDR Build Trust and Confidence?

- **FDR is also no substitute for good internal bank-level dispute resolution**
- **Canada adopted a 2-tier system from the beginning in both the banking and investment sectors (internal firm complaint handling, escalation to industry-level dispute resolution - OBSI)**
- **Vast majority of complaints appear to be resolved at the firm level**
- **Good internal complaint data is not obtained from all financial service providers (would be very useful for public policy development)**
- **Prevent inappropriate use of the term "Ombudsman" for firms' internal FDR to avoid public confusion and dilution of the role**



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# What FDR Does Well

- Gives government officials a credible, impartial place to refer consumer complaints about their financial service provider
- An independent and impartial review provides “closure” even for complaints where we say “no” – usually ends the matter, which benefits the participating firms
- Provides an accessible way to address complaints that would not otherwise be resolved through the courts due to factors such as cost, time, intimidation/fear of court process



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# FDR Accessibility is Key to Effectiveness

- **Make it free, informal, and non-legalistic; adopt a fairness standard; employ well-trained consumer-facing staff**
- **No impact on legal rights of the consumer or firm**
- **Stops the limitation period clock**
- **Language - OBSI conducts investigations in English and French; inquiries handled in over 170 languages – contracted service**
- **Audited processes to be senior-friendly; TTY access for the deaf; website readability for the blind; accessible office**



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# FDR Accessibility

- **How to make the public aware of their ability to access FDR?**
- **Difficult to make FDR well-known, but very important to be able to find it when a problem arises**
- **Low unaided public awareness (<2%); CAD 1,000,000 per 1% increase and CAD 500,000 to keep it there**
- **Very reliant upon firm disclosure and referrals backed by regulatory rules – an ongoing challenge**





# Other Benefits to Society from FDR

- **Lower cost process for all parties (consumers/investors and financial services providers)**
- **Diverts many consumer complaints away from the already overburdened court system – likely averts some class action lawsuits**
- **Learnings from complaint cases and independent assessments by FDR structure provide valuable feedback that helps financial service providers to improve**



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# Other Benefits to Society from FDR

- **Individual complaints can identify systemic problems that firms and regulators may not be aware of – early warning system**
- **Issues highlighted in complaints are valuable for public policy development by regulators and legislators**
- **Enables the state to deal selectively and effectively with regulatory priorities without mixing in compensation**
- **Allows a different (non-legalistic) standard to be applied for compensation (e.g., fairness)**



# What FDR Does Not Do Well, Nor Should It

- **Ineffective tool against financial sector corruption**
- **Does not address concerns over the pricing of financial products and services**
- **Does not deal with concerns about access to credit**
- **Does not deal with regulatory breaches; different issues and different standards ("fairness" versus "legality")**
- **Punishment or removal of individuals or firms**



## 2. The Value of International Work on Best Practices and Effective Approaches



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# International Best Practices and Effective Approaches

- **Powerful proxy for an absent or weak consumer voice**
- **Helps stakeholders promote more effective scheme development from their legislators and regulators**
- **Gives legislators and regulators useful guidance on what to design for local market needs and a template**
- **Provides a basis for holding non-governmental FDR schemes accountable to stakeholders, especially government; helps hold governmental schemes accountable to the public and sometimes industry as well**



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# International Work on Best Practices and Effective Approaches

- **Helps build more broad-based capacity in design/evaluation of FDR schemes**
- **Provides a focal point for informal international networks like INFO to engage with to share experience and feed into the multilateral development of effective approaches**
- **Undoubtedly accelerates the implementation and evolution of FDR schemes in both emerging and mature market environments**



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# Questions?

## Thank You



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# 3. Canadian Financial Dispute Resolution (FDR)



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# Who We Are at OBSI

- **An independent national dispute resolution service established as a not-for-profit corporation (an NGO)**
- **An alternative to the legal system for banking services and investment firms' customers with an unresolved complaint**
- **Started in 1996 covering major chartered banks; in 2002 became the Ombudsman for Banking Services and Investments when the mandate expanded to all members of the:**
  - **Investment fund companies (mutual funds)**
  - **Investment dealers (brokerages)**
  - **Mutual fund dealers**



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## Who We Are at OBSI (cont'd)

- **Currently have over 600 participating firms, adding over 1,000 more in 2014 at request of investment regulators**
- **Banks, federally-regulated trust companies, investment dealers, mutual fund dealers, mutual fund companies, and scholarship plan dealers**
- **Some credit unions have joined voluntarily**
- **Accessible by toll-free phone and fax; bilingual investigation services (English and French), customer inquiries can be handled in over 170 languages**



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# What We Do at OBSI

- **Informal, confidential and independent review of complaints not resolved to the satisfaction of consumer**
- **We look primarily at cases of direct financial loss as a result of error, misleading information or bad advice**
- **Review industry standards, firm policies, regulations, laws ... and decide what would be “fair under the circumstances”**
- **Goal is to make the client “whole” where maladministration is found to have occurred**



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# What We Do at OBSI (cont'd)

- **We make recommendations to the firm; not binding on either party**
- **Clients do not forfeit their legal rights; may reject our findings and start legal proceedings**
- **“The Olive Branch” - Gives participating firms an impartial service to which they can refer their unresolved complaints**
- **“The Stick” - We will make public any participating firm’s refusal of a recommendation, had only happened once since OBSI’s creation in 1996 – That has recently changed, 20 in the last 18 months, all investment-related**



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# How We Work at OBSI

- **Member firms must:**
  - **Have an internal complaint-handling system**
  - **Inform their clients about their internal complaint handling system**
  - **Inform their clients about OBSI and refer after completion or after 90 days**
  - **Co-operate in OBSI investigations**
  - **Pay their share of OBSI's operating costs**



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# How We Work at OBSI (cont'd)

- **Firm has the first responsibility to resolve a complaint**
- **OBSI is an informal service, not bound by judicial rules**
- **We are not a regulator; we do not fine or punish firms**
- **Usually investigate; sometimes mediate**
- **Objective is to determine "Fairness in the circumstances" and recommend compensation**



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# Systemic Cases (Dealing with “Mass Cases”)

- **Controversial power introduced by senior regulators in 2008; in force starting 2010**
- **Strongly opposed by industry and some regulators who saw it as a matter of regulatory jurisdiction**
- **Conducted 10 “systemic investigations” in 2010-11, 3 resulted in recommendations; refused by firm – reported to regulator**
- **Voluntarily withdrawn by OBSI Board in June of 2012 under pressure from industry and regulators**
- **Re-introduced in recent banking regulations and investment regulator rules as a whistleblower requirement (no investigation)**



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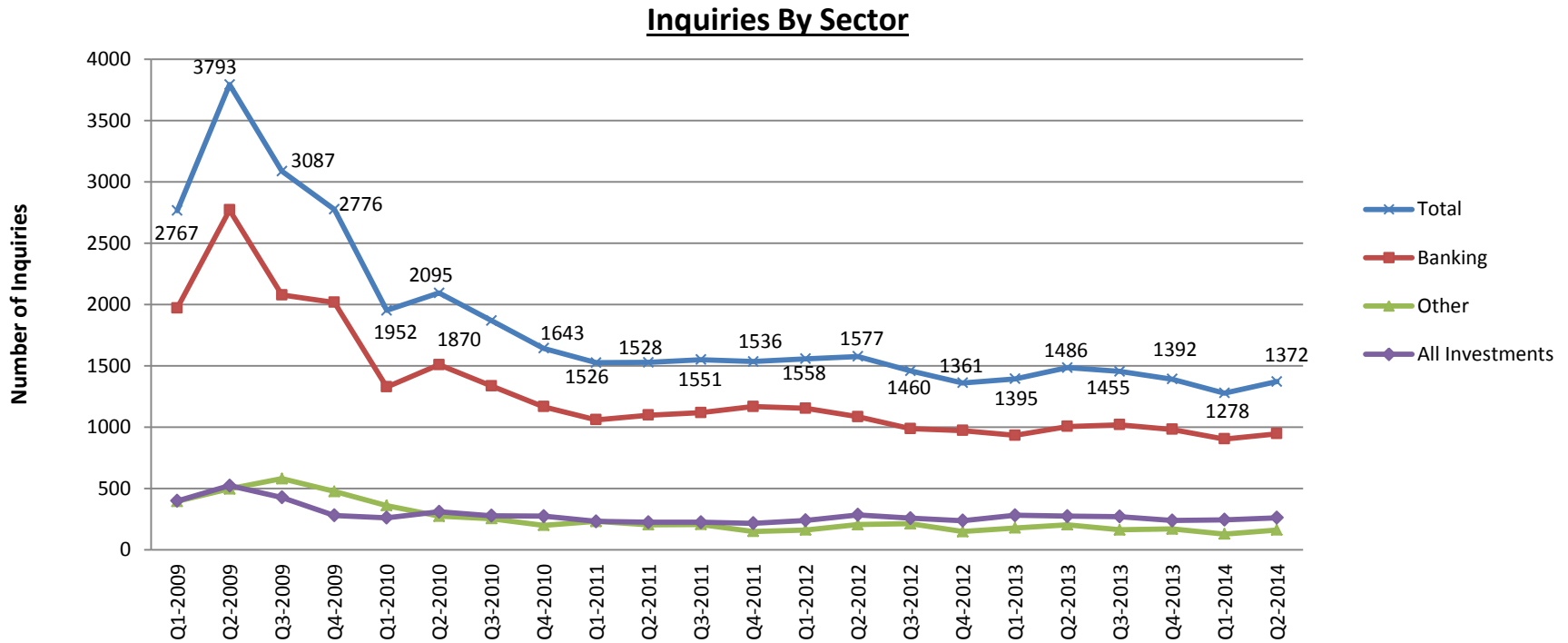
# Governance of OBSI

- **Independent Board of Directors**
- **Chair of the Board is a non-industry (community) Director**
- **Community Directors must not be associated with either industry or government for two years prior**
- **Community Directors are the majority of the Board (7 of 10) and a majority of them are required to approve OBSI's budget and control hiring and firing of Ombudsman**
- **Directors not involved in investigations, decisions or appeals**

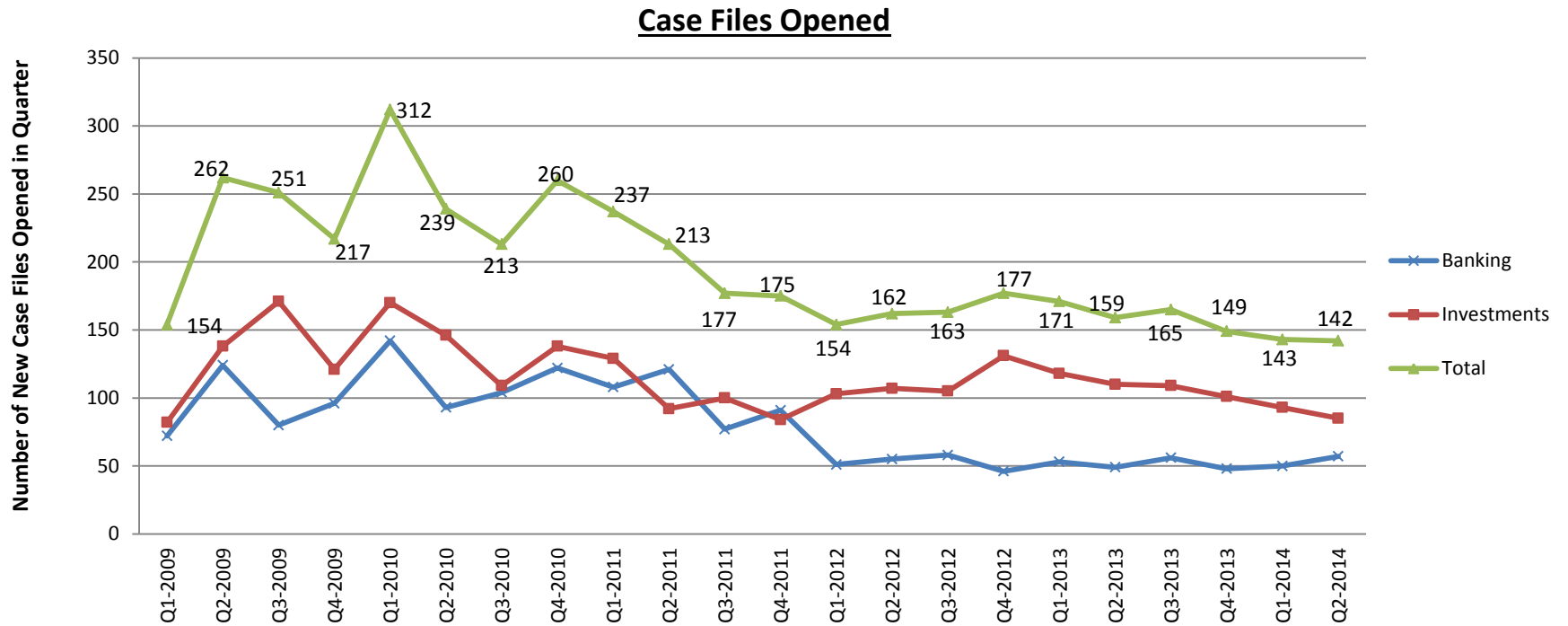




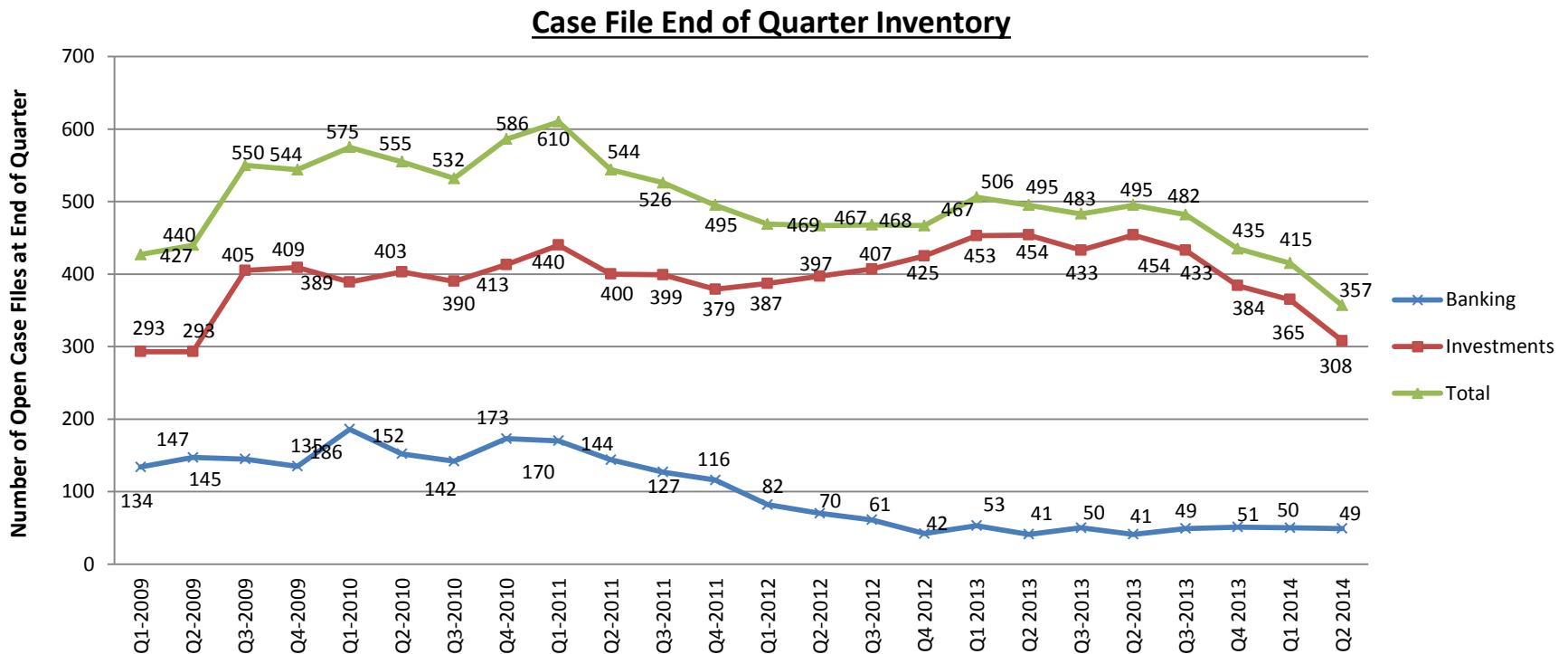
# OBSI Opened Inquiries by Sector



# OBSI Case Files Opened by Sector



# OBSI Case File End of Quarter Inventory by Sector



# Banking Complaint Issues in Canada

- **Banking complaints up 100% 2008-2010; then settled**
- **Half of OBSI's banking complaints are payments-related; one-third involve debit and credit card fraud**
- **Mortgage pre-payment penalties**
- **Payment scams**
- **Collection activity**
- **Privacy and service issues**



# Canada Has a Unique Legal and Regulatory Environment for Financial Services

**Less developed legal framework for consumer protection in financial services:**

- **No legal duty of care imposed on banks by Canadian law, different situation for investment issues**
- **Bankers not fiduciaries, no fiduciary duty for “pure” banking transactions**
- **Special duty may apply where financial advice is given, but not in normal “lending” or transactional situations**
- **So where can an Ombudsman look to determine what is fair under the circumstances?**



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# Canada's Unique Environment for a Financial Sector Ombudsman

## Canada's federal-provincial sharing of powers that apply to our work:

- Banking is federal; trust companies can be federal or provincial
- Credit unions are provincial, but that system is currently evolving
- Non-bank consumer credit is provincial
- Securities regulation (investment leverage loans) is provincial (for now)
- Consumer protection issues are predominantly provincial
- Criminal Code provision restricting interest rates to 60% is federal



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# Current Challenges

## Unstable Environment

- **Uneven government support for Ombudsman-like structures**
- **Virtually no effective consumer voice**
- **Competition in banking dispute resolution and banks seeking cost and scope reductions**
- **Uneven regulator support for scheme mandate across sectors and jurisdictions**



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# Current Challenges

## Unstable Environment (cont'd)

- **Under-resourced for complaint volumes post-global financial crisis**
- **Lack of regulatory clarity re specific expectations and systemic (mass) cases**
- **Expanding mandate of investment sector dispute resolution coverage to smaller firms operating in more difficult areas**





# Current Challenges

## Industry Attacks on Schemes

- **Demanding choice to have leverage over “supplier of ADR services”**
- **Demanding move toward determination of legality rather than subjective fairness of market conduct**
- **Seek greater procedural fairness safeguards that generally favour the financial institution and decrease accessibility for consumers**



# Current Challenges

## Industry Attacks on Schemes (cont'd)

- **Treating resolution of consumer complaints like a tactical litigation minimization exercise**
- **Constrain resourcing (funding, staff, access to information) where industry-funded**
- **Seek to contain progressive mandate evolution even in the face of opportunities to adopt best practices**
- **Use the informality and confidentiality of the process against the FDR scheme**



# Current Challenges

## Industry Attacks on Schemes (cont'd)

- **Some industry players seek to actively undermine the scheme by:**
  - **Arguing every point**
  - **Tying up the office with endless iterations, lengthy legalistic responses, demands for explanations and appeals of decisions**
  - **Then complaining the scheme is inefficient or incompetent**
  - **Initiating a campaign of misinformation to fellow industry participants, media, regulators and government**



# Further Information

**Ombudsman for Banking Services  
and Investments (OBSI)**

**Toronto, Canada**

**[www.obsi.ca](http://www.obsi.ca)**

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